

*REMARKS/ARGUMENTS**The Pending Claims*

Claims 1-3, 6-19, 21, and 42-57 are pending. Claims 2, 3, 11, 12, and 42-57 are withdrawn as being drawn to a non-elected invention in response to a restriction requirement. Thus, claims 1, 6, 10, 13-19, and 21 currently are under examination.

The Amendments to the Claims

Claim 1 has been amended to recite that the nucleic acid sequence comprises SEQ ID NO: 1 and further encodes a heterologous sorting signal. This amendment is supported by the specification at, for example, paragraph [0074]. Claim 7 has been amended to recite only a lysosome pathway. Claim 20 has been cancelled. Claims 2, 3, and 42-57 have been identified as withdrawn. Claim 58 is new and is directed to the subcellular sorting pathways cancelled from claim 7. As such, claim 58 is identified as withdrawn. Applicants note that, upon allowance of a claim, any withdrawn claims that depend from or otherwise include all the limitations of the allowable claim should be rejoined in accordance with M.P.E.P. § 821.04. No new matter has been added by way of these amendments.

The Office Action

The Office Action alleges that claims 2, 3, and 42-57 are directed to non-elected inventions and have been withdrawn from further consideration. Claim 20 is objected to under 37 C.F.R. § 1.75 as being a substantial duplicate of claim 15. Claim 1 is rejected under 35 U.S.C. § 112, second paragraph, as allegedly indefinite. The Office Action also indicates that SEQ ID NO: 1 is free of prior art and is allowable. Reconsideration of these objections and rejection is respectfully requested.

Discussion of Election/Restriction

Claims 2, 3, and 42-57 have been withdrawn from consideration because they allegedly are directed to an invention that is independent or distinct from the elected invention. In particular, the Office Action alleges that the subject matter of claims 2 and 3 is distinctly different from the elected subject matter. Applicants note that claims 2 and 3 depend from claim 1 and, therefore, contain all of the limitations of claim 1. Thus, any

search of claims 2 and 3 necessarily would overlap with a search of claim 1. As such, there would be no serious burden on the Examiner to search claims 2 and 3 together with claim 1, and the restriction as between these claims is improper.

With respect to claims 42-57, the Office Action alleges that only a subcombination of the vectors encompassed by claim 1 would function in the method defined by claims 42-57. The Office Action also contends that other gene transfer vectors encoding different anthrax factors can be used in the method defined by claims 42-57, and that the gene transfer vector of claim 1 can be used in other methods. As with claims 2 and 3, claims 42-57 depend from claim 1 and contain all of the limitations of claim 1. Moreover, the Office Action provides no evidence to support its allegation that only a subcombination of the vectors encompassed by claim 1 would function in the method of claims 42-57. Applicants note that all of the gene transfer vectors encompassed by claim 1 would function in the method defined by claims 42-57. Thus, as with claims 2 and 3, Applicants submit that there would be no serious burden on the Examiner to search claims 42-57 together with the claim 1, and the restriction as between these claims is improper.

In any event, upon the allowance of claim 1, the Examiner should rejoin and consider claims 2, 3, and 42-57.

Claim 7 is objected to for allegedly containing non-elected subject matter. Claim 7 has been amended to recite only a lysosome pathway, thereby mooting this objection.

Discussion of Objection Under 37 C.F.R. § 1.75

The Office Action objects to claim 20 under 37 C.F.R. § 1.75 as allegedly being a substantial duplicate of claim 15. Claim 20 has been cancelled, thereby mooting this objection.

Discussion of Rejection Under 35 U.S.C. § 112, Second Paragraph

Claims 1, and claims 6-10 and 13-21 depending therefrom, are rejected under Section 112, second paragraph, as allegedly indefinite. Specifically, the Office Action contends that it is not clear whether the heterologous sorting signal is part of SEQ ID NO: 1 or is in addition to SEQ ID NO: 1. Solely in an effort to advance prosecution of the subject

application, and not in acquiescence of the rejection, claim 1 has been amended to recite a gene transfer vector comprising a nucleic acid sequence which comprises SEQ ID NO: 1 *and further encodes* a heterologous sorting signal. As such, the metes and bounds of claim 1 are more clear, and the Section 112, second paragraph, rejection of claims 1, 6-10, and 13-21 should be withdrawn.

Conclusion

Applicants respectfully submit that the patent application is in condition for allowance. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned agent.

Respectfully submitted,



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